Supreme Court, U. S.
FILED
FEB 17 1979
MICHAEL RODAK, JR., CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-749

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COMMONWEALTH OF KENTUCKY - Petitioner

*versus*

HAROLD WHORTON - - - - Respondent

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On Writ of Certiorari to the Supreme Court
of the Commonwealth of Kentucky

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# APPENDIX

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**PETITION FOR CERTIORARI FILED**
**NOVEMBER 6, 1978**
**CERTIORARI GRANTED JANUARY 8, 1979**

WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

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# SUPREME COURT OF KENTUCKY

**OPINION RENDERED JULY 25, 1978**

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HAROLD WHORTON

*v.*

COMMONWEALTH OF KENTUCKY

**File No. 78-SC-92-MR**

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*Appeal from Jefferson Circuit Court*
*Action No. 157406, 157667, 157391*

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**MANDATE**—Issued October 10, 1978

The Court being sufficiently advised, it seems the judgment herein is erroneous.

It is therefore considered that said judgment be reversed for proceedings consistent with the opinion herein; which is ordered to be certified to said court.

October 10, 1978 Appellee's Petition for Rehearing Denied.

(s) Martha Layne Collins
Clerk



# INSTRUCTIONS TENDERED AT TRIAL BY HAROLD WHORTON

# JEFFERSON CIRCUIT COURT

CRIMINAL BRANCH, FOURTEENTH DIVISION

No. 157391
157406
157667

---

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

*v.*

HAROLD WHORTON - - - - - *Defendant*

---

## DEFENDANT'S REQUESTED INSTRUCTION No. 1

The jury is advised that:

1. Only matters properly before the jury as a whole may be considered. A member should not, for instance, be influenced by any knowledge of the acts, character, or service of the accused not based on the evidence or other proper matter before the jury; by any opinions not properly in evidence; or by motives of partiality, favor, or affection. In weighing the evidence a member is expected to utilize his common sense and his knowledge of human nature and of the ways of the world. In the light of all the circumstances of the case, he should consider the inherent probability or improbability of the evidence.

2. As members of the jury you are required to determine the credibility of the witnesses, that is, their worthiness of belief. In judging the credibility of the witnesses in this proceeding, you should carefully weigh the testimony given, and in so doing, consider all the circumstances under which any witness has testified; his demeanor and



manner while on the stand; the acuteness of his powers of observation; his interest, if any, in the outcome of the case; his friendships and prejudices; the extent to which he is contradicted or corroborated by other credible evidence, if at all; and any circumstances that tend to shed light upon his credibility, taking into account your own experience in dealing with people.

3. A member may properly believe one witness and disbelieve several witnesses whose testimony is in conflict with that of the one. You should reconcile the evidence in this case in accordance with the weight and credibility which you, in your best judgment determine should be given to the testimony of each witness (and to each other item of evidence). You should not disregard the testimony of any witness without due consideration.

4. The law presumes an accused to be innocent of crime. He begins the trial with a clean slate, with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit an accused unless the jury members are satisfied beyond a reasonable doubt of the accused's guilt from all the evidence in the case.

5. A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. The meaning of the rule is that the proof must be such as to exclude, not every hypothesis or possibility of innocence, but any fair and rational hypothesis except that of guilt; what is required is not an absolute or mathematical certainty but a moral certainty. An accused is not to be convicted on mere suspicion or conjecture. A reasonable doubt may arise, not only from the evidence produced, but also from a lack of evidence. Since

the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, an accused has the right to rely upon failure of the prosecution to establish such proof. (An accused may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.) The law does not impose upon an accused the duty of producing any evidence. A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jury members do not feel convinced to a moral certainty that an accused is guilty of the offense(s) charged.

The final determination as to the weight of the evidence in this case rests solely upon you members of the jury. You must disregard any comment or statement made by me during the course of the trial which may seem to indicate an opinion as to the guilt or innocence of the accused, for you alone have the independent responsibility of deciding that issue. Each of you must impartially resolve the ultimate issue as to the guilt or innocence of the accused in accordance with the law, the evidence admitted in court, and your own conscience.

I must caution you also against interpreting any comment, statement, ruling or instruction which I have given during this trial as indicating that the accused has the burden of proving his innocence. On the contrary, the burden is always on the Government to prove the accused guilty beyond a reasonable doubt, and this burden of proof never shifts throughout the trial.

Reference: Air Force Manual 111-2, 15 October 1971; *United States* v. *Trotter,* 15 USCMA 218, 35 CMR 190 (1965); *United States* v. *Boswell,* 8 USCMA 145, 23 CMR 369 (1957). See also *United States* v. *Rinehart,* 8 USCMA 402, 24 CMR 212 (1957). *United States* v. *Offley, et al.,* 3 USCMA 276, 12 CMR 32 (1953); *United States* v. *Moore,* 4 USCMA 482, 16 CMR 56 (1954).



(s) John B. Southard, Jr.
Assistant District Defender
Office of the Jefferson District
Public Defender
1000 Republic Building
Louisville, Kentucky 40202

CERTIFICATE

I do hereby certify that a copy of the foregoing was delivered to the Commonwealth's Attorney, or his agent, on this 21st day of September, 1977.

(s) John B. Southard, Jr.

# JEFFERSON CIRCUIT COURT

CRIMINAL BRANCH, FOURTEENTH DIVISION

**No. 157391**
**157406**
**157667**

---

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

*v.*

HAROLD WHORTON - - - - - *Defendant*

---

## INSTRUCTION No. 2

The jury is advised that:

The defense has introduced evidence which may tend to show that the accused could not have committed the offenses charged in indictments 157406 and 157667 charging incidents at the Krispy Creme Doughnut Shop, on May 15, 1976, and the Burger Chef Restaurant on May 25, 1976, because he was at another place at the time the offense was allegedly committed. This is known as an alibi. An alibi is one of the most perfect and conclusive means of establishing innocence, since an accused who was not present at the time of an alleged offense could not have committed it. The burden is on the prosecution to establish beyond a reasonable doubt that the accused was present at the scene of the offense at the time it was committed. Consequently, unless you are satisfied beyond a reasonable doubt that the accused was present, you must acquit him.

Reference: Air Force Manual 111-2, 15 October 1971; *United States* v. *Moore*, 15 USCMA 345, 35 CMR 317 (1965); *United States* v. *Bigger*, 2 USCMA 297, 8 CMR 97 (1953).



(s) John B. Southard, Jr.
Assistant District Defender
Office of the Jefferson District
Public Defender
1000 Republic Building
Louisville, Kentucky 40202

CERTIFICATE

I do hereby certify that a copy of the foregoing was delivered to the Commonwealth's Attorney, or his agent, on this 21st day of September, 1977.

(s) John B. Southard, Jr.

# JEFFERSON CIRCUIT COURT

CRIMINAL BRANCH, SIXTEENTH DIVISION

No. 157391
157406
157667

---

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

*v.*

HAROLD WHORTON - - - - - *Defendant*

---

## INSTRUCTION No. 3

One of the most important issues in this case is the identification of the defendant as the perpetrator of the crime. The Commonwealth has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness himself be free from doubt as to the correctness of his statement. However, you, the jury must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict him. If you are not convinced beyond a reasonable doubt that the defendant is the person who committed the crime, you must find the defendant not guilty.

Identification testimony is an expression of belief or impression by the witness. Its value depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In appraising the identification testimony of a witness, you should consider the following:



(a) Are you convinced that the witness had the capacity and an adequate opportunity to observe the offender?

Whether the witness had an adequate opportunity to observe the offender at the time of the offense will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were lighting conditions, whether the witness had had occasion to see or know the person in the past.

(b) Are you satisfied that the identification made by the witness subsequent to the offense was the product of his own recollection? You may take into account both the strength of the identification, and the circumstances under which the identification was made.

If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to him for identification, you should scrutinize the identification with great care. You may also consider the length of time that lapsed between the occurrence of the crime and the next opportunity of the witness to see defendant, as a factor bearing on the reliability of the identification.

You may also take into account that an identification made by picking the defendant out of a group of similar individuals is generally more reliable than one which results from the presentation of the defendant alone to the witness.

(c) Finally, you must consider the credibility of each identification witness in the same way as any other witness, consider whether he is truthful, and consider whether he had the capacity and opportunity to make a reliable observation on the matter covered in his testimony.

I again emphasize that the burden of proof on the prosecutor extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the

perpetrator of the crime with which he stands charged. If after examining the testimony, you have reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

Respectfully submitted,

(s) John B. Southard, Jr.
Assistant District Defender
Office of the Jefferson District
Public Defender
1000 Republic Building
Louisville, Kentucky 40202

CERTIFICATE

I do hereby certify that a copy of the foregoing was delivered to the Commonwealth's Attorney, or his agent, on this 21st day of September, 1977.

(s) John B. Southard, Jr.



# INSTRUCTIONS GIVEN TO THE JURY

[T.R. 35]

# JEFFERSON CIRCUIT COURT

FOURTEENTH DIVISION

Nos. 157667
157406
157391

---

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

*v.*

HAROLD WHORTON - - - - - *Defendant*

---

## INSTRUCTIONS

Instruction No. I—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 23rd of May 1976, and before the finding of the indictment herein, the defendant stole a sum of money from Burger Chef Restaurant at 4975 Shelbyville Road;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon Jack Cole, an employee, by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17



If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

[T.R. 36]

Instruction No. II—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 15th of May 1976, and before the finding of the indictment herein, the defendant stole property and a sum of money from the Krispy Kreme Doughnut Shop at 3920 South Seventh Street Road;

(b) That in the course of so doing and with intent to accomplish the theft of the Krispy Kreme Doughnut Shop, the defendant threatened the immediate use of physical force upon Charles Sanders and other employees by pointing a pistol at them;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

[T.R. 37]

Instruction No. III—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 15th of May 1976, and before the finding of the indictment herein, the defendant stole a sum of money from Charles Sanders;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon Charles Sanders by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 38]**

Instruction No. IV—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 15th of May 1976, and before the finding of the indictment herein, the defendant stole a sum of money from James Toohey;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon James Toohey by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17



If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 39]**

Instruction No. V—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 15th of May 1976, and before the finding of the indictment herein, the defendant stole a sum of money from Harold Lovell;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon Harold Lovell by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 40]**

Instruction No. VI—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the

indictment herein, the defendant stole a sum of money from Jerry's Restaurant at 2106 Brownsboro Road;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon David Schaublin and other employees by pointing a pistol at them;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 41]**

Instruction No. VII—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant stole a sum of money from John Sellinger;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon John Sellinger by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17



If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 42]**

Instruction No. VIII—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant stole a sum of money from Michael Golder;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon Michael Golder by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon or was a "dangerous instrument" as defined in Instruction No. 17.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 43]**

Instruction No. IX—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the in-

dictment herein, the defendant stole a sum of money from Lillian Cheek;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon Lillian Cheek by pointing a pistol at her;

AND

(c) That said pistol was a deadly weapon.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 44]**

Instruction No. X—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant stole a sum of money from David Voling;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon David Voling by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.



**[T.R. 45]**

Instruction No. XI—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant stole a sum of money from Charles Cheek;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon Charles Cheek by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 46]**

Instruction No. XIA—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant intended to accomplish a theft of property from Charles Cheek;

(b) That in the course of so doing, and with the intent to accomplish a theft, the defendant threatened the

immediate use of physical force upon Charles Cheek by pointing a pistol at him;

AND

(c) That said pistol was a deadly weapon.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than five (5) years nor more than ten (10) years, in your discretion.

**[T.R. 47]**

Instruction No. XII—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant stole property from Heidi Watley;

(b) That in the course of so doing and with intent to accomplish the theft, the defendant threatened the immediate use of physical force upon Heidi Watley by pointing a pistol at her;

AND

(c) That said pistol was a deadly weapon.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than ten (10) years nor more than twenty (20) years, in your discretion.

**[T.R. 48]**

Instruction No. XIIA—You will find the defendant Harold Whorton guilty under this instruction if, and only



if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant intended to accomplish a theft of property from Heidi Watley;

(b) That in the course of so doing, and with the intent to accomplish a theft, the defendant threatened the immediate use of physical force upon Heidi Watley by pointing a pistol at her;

AND

(c) That said pistol was a deadly weapon.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than five (5) years nor more than ten (10) years, in your discretion.

**[T.R. 49]**

Instruction No. XIII—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 176, and before the finding of the indictment herein, the defendant threatened the use of, pointed and shot a pistol within close proximity of several persons at the Jerry's Restaurant at 2106 Brownsboro Road, and that he thereby wantonly created a substantial danger of death or serious physical injury to them;

(b) That under the circumstances such conduct manifested extreme indifference to the value of human life.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than one (1) year nor more than five (5) years, in your discretion.

Instruction No. XIV—If you do not find the defendant guilty under Instruction No. XIII, you will find him guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and within twelve months before the issuance of the finding of the indictment herein, he wantonly threatened the use of, pointed and shot a pistol within close proximity of several persons at the Jerry's Restaurant at 2106 Brownboro Road,

AND

(b) That he thereby wantonly created a substantial danger of physical injury to them.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the county jail for a period not to exceed twelve months, at a fine not to exceed $500.00, or at both confinement and fine, in your discretion.

**[T.R. 50]**

Instruction No. XV—You will find the defendant Harold Whorton guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and before the finding of the indictment herein, the defendant threatened the use of and pointed a pistol at Officer Tom Jenkins of the Louisville Police Department, and that he thereby wantonly created a substantial danger of death or serious physical injury to him;

AND

(b) That under the circumstances such conduct manifested extreme indifference to the value of human life.



If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than one (1) year nor more than five (5) years, in your discretion.

Instruction No. XVI—If you do not find the defendant guilty under Instruction No. XV, you will find him guilty under this instruction if, and only, you believe the evidence beyond a reasonable doubt all of the following:

(a) That in Jefferson County, Kentucky, on or about the 1st of June 1976, and within twelve months before the issuance of the finding of the indictment herein, he wantonly threatened the use of and pointed a pistol at Officer Tom Jenkins of the Louisville Police Department;

AND

(b) That he thereby wantonly created a substantial danger of physical injury to him.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the county jail for a period not to exceed twelve months, at a fine not to exceed $500.00, or at both confinement and fine, in your discretion.

**[T.R. 51]**

Instruction No. XVII—Definitions

(a) "Dangerous instrument"—means any instrument which under the circumstances in which it is used, at-

tempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

(b) "Wantonly"—a defendant acts wantonly with respect to another's death or physical injury when he is aware of and consciously disregards a substantial and unjustifiable risk that death or physical injury will occur. In order to be "substantial and unjustifiable" the risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(c) "Serious physical injury"—means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(d) "Physical injury"—means substantial physical pain or any impairment of physical condition.

Instruction No. XVIII—If upon the whole case you have a reasonable doubt as to the defendant's guilt, you shall find him not guilty. The term reasonable doubt as used in these instructions means a substantial doubt, a real doubt, in that you must ask yourself not whether a better case might have been proven but whether, after hearing all the evidence, you actually doubt that the defendant is guilty.

Concerning Instruction Nos. XIII and XIV—If you find the defendant guilty but have a reasonable doubt as to the degree of the offense of which he is guilty you shall find him guilty of the lower degree. Instruction No. XIII is the higher degree and Instruction No. XIV is the lower degree.

Concerning Instruction Nos. XV and XVI—If you find the defendant guilty but have a reasonable doubt as to the degree of the offense of which he is guilty you shall find him guilty of the lower degree. Instruction No. XV is the higher degree and Instruction No. XVI is the lower degree.



**[T.R. 52]**

Instruction No. XIX—Under the evidence presented to you in this case, you may find the defendant not guilty of all or some of the charges; or you may find the defendant guilty of all or some of the charges.

Instruction No. XX—The verdict of the jury must be unanimous and be signed by one of you as foreman. You may use one of the form provided at the end of these instructions in writing your verdict.

(s) S. Rush Nicholson
Judge S. Rush Nicholson

# THE JURY'S VERDICTS



[T.R. 53]

VERDICT No. 1

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. I.

_____

Foreman

VERDICT No. 2

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. I and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

VERDICT No. 3

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. II

_____

Foreman

VERDICT No. 4

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. II and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

[T.R. 54]

VERDICT No. 5

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. III.

_____

Foreman

VERDICT No. 6

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. III and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

VERDICT No. 7

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. IV.

_____

Foreman

VERDICT No. 8

We, the Jury, find the defendant Harold Whorton guilty under Instruction IV and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

**[T.R. 55]**

VERDICT No. 9

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. V.

_____

Foreman

VERDICT No. 10

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. V and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman



VERDICT No. 11

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. VI.

_____

Foreman

VERDICT No. 12

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. VI and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

**[T.R. 56]**

VERDICT No. 13

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. VII.

_____

Foreman

VERDICT No. 14

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. VII and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

VERDICT No. 15

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. VIII.

_____

Foreman

VERDICT No. 16

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. VIII and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

[T.R. 57]

VERDICT No. 17

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. IX.

_____

Foreman

VERDICT No. 18

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. IX and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

VERDICT No. 19

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. X.

_____

Foreman

VERDICT No. 20

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. X and fix his punishment at confinement in the penitentiary for 20 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman



[T.R. 58]

VERDICT No. 21

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XI.

(s) James E. Kidwell
Foreman

VERDICT No. 22

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XI and fix his punishment at confinement in the penitentiary for _____ years.

(indicating the punishment)

_____

Foreman

VERDICT No. 23

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XIA.

_____

Foreman

VERDICT No. 24

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XIA and fix his punishment at confinement in the penitentiary for 10 years.

(indicating the punishment)

(s) James E. Kidwell
Foreman

[T.R. 59]

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XII.

(s) James E. Kidwell
Foreman

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XII and fix his punishment at confinement in the penitentiary for_____years.
(indicating the punishment)

_____
Foreman

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XIIA.

_____
Foreman

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XIIA and fixe his punishment at confinement in the penitentiary for 10 years.
(indicating the punishment)

(s) James E. Kidwell
Foreman

**[T.R. 60]**

VERDICT No. 25

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XIII.

_____
Foreman

VERDICT No. 26

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XIII and fix his punishment at confinement in the penitentiary for 5 years.
(indicating the punishment)

(s) James E. Kidwell
Foreman



VERDICT No. 27

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XIV.

_____
Foreman

VERDICT No. 28

(a) We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XIV and fix his punishment at confinement in the County Jail for _____ months and a fine of $_____.

_____
Foreman

(b) We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XIV and fix his punishment at confinement in the County Jail for _____ months.

_____
Foreman

**[T.R. 61]**

(c) We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XIV and fix his punishment at a fine of $_____.

_____
Foreman

VERDICT No. 29

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XV.

_____
Foreman

VERDICT No. 30

We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XV and fix his punishment at confinement in the penitentiary for 5 years.
(indicating the punishment)

(s) James E. Kidwell
Foreman

VERDICT No. 31

We, the Jury, find the defendant Harold Whorton not guilty under Instruction No. XVI.

_____

Foreman

**[T.R. 62]**

VERDICT No. 32

(a) We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XVI and fix his punishment at confinement in the County Jail for _____ months and a fine of $_____.

_____

Foreman

(b) We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XVI and fix his punishment at confinement in the County Jail for _____ months.

_____

Foreman

(c) We, the Jury, find the defendant Harold Whorton guilty under Instruction No. XVI and fix his punishment at a fine of $_____.

_____

Foreman

_____

Judge S. Rush Nicholson